

2009

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### **Recommended Citation**

Borthwick, Fiona, Governing Pets and Their Humans: Dogs and Companion Animals in NSW, 1966-98 2009.  
<https://ro.uow.edu.au/artspapers/1783>

# GOVERNING PETS AND THEIR HUMANS

## Dogs and Companion Animals in New South Wales, 1966–98

Fiona Borthwick\*

Over approximately the last century, the major pieces of legislation that govern pets and their humans in New South Wales have been the *Prevention of Cruelty to Animals Act 1979*, the *Crimes Act 1900* (NSW), the *Dog and Goat Act 1898*, the *Dog Act 1966* and the *Companion Animal Act 1998*. Using a governmentality-based methodology, this article reveals that the changes in the regulation of dogs from the *Dog Act 1966* to the *Companion Animal Act 1998* show a shift from controlling dogs to governing dog owners.

### Introduction

There is a substantial and growing literature on the connections between humans and animals. This research comes from many perspectives, including the issue of animal rights,<sup>1</sup> the complexities of the pet–human relationship,<sup>2</sup> the connections between nature, animals and humans,<sup>3</sup> philosophical analyses of the status of animals,<sup>4</sup> the cultural and social history of animals in Australia<sup>5</sup> and the psychological benefits of animal companionship.<sup>6</sup> Much of this literature explores the place of pets in modernity, and looks at how integral to and beneficial pets are in many people's lives. However, there is very little consideration of the legislative regulation of pets and their humans in the literature.<sup>7</sup> All Australian states and territories have legislation that regulates human–animal relations.

Over approximately the last century, the major pieces of legislation<sup>8</sup> that govern pets and their humans in New South Wales have been the *Prevention of Cruelty to Animals Act 1979*, the *Crimes Act 1900*, the *Dog and Goat Act 1898*, the *Dog Act 1966* and the *Companion Animal Act 1998*.<sup>9</sup> Using a governmentality-

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<sup>1</sup> Tester (1992); Singer (1995); Hills (2005).

<sup>2</sup> Newby (1999).

<sup>3</sup> Eder (1996); Macnaghten and Urry (1996).

<sup>4</sup> Steeves (1999).

<sup>5</sup> Franklin (2006).

<sup>6</sup> Brown (2003); Greenebaum (2004).

<sup>7</sup> One exception is Newby (1999), pp. 226–9, 244–5.

<sup>8</sup> Unless stated, the Acts under consideration are the original versions without any amendments.

<sup>9</sup> Currently in New South Wales there are three primary Acts that cover the interactions between pets and their owners and others, *The Prevention of Cruelty to Animals Act*

based methodology, this article reveals that the regulation of dogs from the *Dog Act 1966* to the *Companion Animal Act 1998*<sup>10</sup> shows a shift from controlling dogs to governing dog owners.

I have used the term 'pet' and 'owner' throughout the paper instead of 'companion animal' because 'pet' more closely reflects the fact that, ultimately, these animals are owned as pieces of property.<sup>11</sup> Despite stronger affective ties, the bottom line is that they are sentient things to be owned. They can be owned as companions, working dogs, hunting or fighting dogs, but underlying all this is the fact that they can be traded in on a newer, better model, they can be simply dumped and they can sit out in the backyard, like a thing, and be ignored except — hopefully — for feeding.

Many people would not think of their dog as property, but for me being a companion is built on, or overlays, dogs' status as property. I recently purchased a 'thing' from the pound. This 'thing' was incredibly hard work, disobedient, destructive, stubborn, chased cars, bikes, joggers and even a helicopter, and had boundless energy. I thought many times, 'I wish I could take her back and get an easier model'. Of course I could not do this because she is not a thing to me: she is a dog — a sentient being, with certain behaviours that did not fit my expectations. At that stage, she was not my companion — she was another thing to worry about. Legally my dog is a thing; culturally and emotionally she is now my companion, but she is still a dog, not my baby or my little shmookins. She became my dog-companion once her behaviour started to meet my expectations; some of her 'dogness' had to be modified. Her rise to companion status is built on my ownership of her and its concomitant responsibilities, and has resulted from my affection for her.

Franklin argues that dogs and cats have always played companion roles; however, 'whereas in the 1950s and 1960s pets were frequently fashionable accessories or bought for recreational or entertainment purposes, from the 1970s onwards companionability is emphasised more and entertainment and décor rather less'.<sup>12</sup> Franklin's latest research shows that Australian pet owners have very strong

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1979, *The Crimes Act 1900* and the *Companions Animal Act 1998*. The *Crimes Act 1900* covers offences such as using a dog as a weapon, stealing a dog or dog's skin, and bestiality. These provisions are much more about the consequences for humans (loss of property, injury, death, or a transgression of the moral code) than they are about the welfare of animals. The *Prevention of Cruelty to Animals Act 1979* attempts to prohibit human conduct that is harmful to animals, and in doing so establishes a framework for the barely acceptable ways an animal should be treated by its human owners/experimenters. This Act requires, for example, that food and drink be provided, assaults not occur, experiments can occur within limitations and unsafe travel is prohibited.

<sup>10</sup> The *Companions Animal Act 1998* is a state government Act, and the state government has responsibility for reviewing and updating the Act, and establishing a statewide register. Through the *Companion Animals Regulation*, its implementation is largely the responsibility of local councils.

<sup>11</sup> Wise (2007–08), p 57.

<sup>12</sup> Franklin (1999), p 94.

emotional ties to their animals.<sup>13</sup> The research on pets as therapy is now considerable. It attributes many health benefits for people who own or come in contact with mostly dogs, but also cats. In this role, the animal is benign and beneficial. These animals are often trained and socialised to be an animal that is like a human carer. As companion animals and therapeutic animals have become a more emotionally and physically integrated part of owners' lives, they and other animals have also become more highly regulated and apparently threatening.

In order to chart the changes in the regulation of pets and their owners, the *Dog Act 1966* and the *Companions Animal Act 1998* are compared. The main aims of the comparison are to examine how problems of government are configured and then addressed, to add regulation to the types of analyses of human–animal relations in the current literature, and to provide an analysis that allows for reflection on how a shift in governing owners affects the status and welfare of dogs. The parliamentary debates and the *Dog Act 1966* and *Companions Animal Act 1998* are addressed primarily through governmentality.

### Governmentality

Governmentality-based studies focus on a wide range of topics, including the regulation of crime and the politics of crime prevention,<sup>14</sup> insurance and risk,<sup>15</sup> pregnancy,<sup>16</sup> self-esteem,<sup>17</sup> the administration of rural assistance schemes<sup>18</sup> and substance use/abuse.<sup>19</sup> Compared with these areas, the regulation of pets is seemingly a small topic of little importance. It seems to have no connection to capitalism, globalisation or the market, as many governmentality studies have done. However, the regulation of pets and their owners is important because it goes to the quality and qualities of everyday life experiences for the animals, for pet owners, and for the newer priorities of the community: the environment and wildlife. The big question posed by governmentality concerns how we are governed in advanced liberal societies and the effect this has on who we can be within certain forms of government. One of the uses of governmentality as a method is that it can bring this big question to bear on the minutia of everyday life. This research forms part of the mosaic of regulation in an advanced liberal society.

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<sup>13</sup> Based on a national survey, Franklin (2006), pp 206–11, found that 82 per cent of respondents kept their dog for companionship and 26 per cent for amusement, and 80 per cent of respondents kept their cat for companionship; 88 per cent of urban dwellers thought that their animal was member of the family, 76 per cent allowed their animal into the lounge/family area and 52 per cent into the respondent's bedroom.

<sup>14</sup> O'Malley (1997).

<sup>15</sup> Ewald (1991).

<sup>16</sup> Ruhl (1999); Weir (1996).

<sup>17</sup> Cruikshank (1996).

<sup>18</sup> Higgins (2004).

<sup>19</sup> Valverde (1998).

Governing in an advanced liberal society requires a certain kind of freedom and capacity to self-govern. Dean argues on 'liberalism as a regime of government' that:<sup>20</sup>

This is a subject whose freedom is a condition of subjection. The exercise of authority presupposes the existence of a free subject of need, desire, rights, interests and choice. However its subjection is also a condition of freedom: in order to act freely, the subject must be shaped, guided and moulded into one capable of responsibly exercising that freedom through systems of domination. Subjection and subjectification are laid upon each other.<sup>21</sup>

The enactment of legislation is an act of government in the obvious sense — that is, the elected representatives take an action to prohibit/allow certain conducts by persons, companies or governments. To take effect in regulating persons, this enactment presupposes a certain kind of individual, as Dean argues. Without this kind of individual the legislation could not have its normative function, nor could it provide the ideational material from which an individual could be censured by other citizens. In drawing on a Foucauldian analysis, there is the conventional governing through legislation and regulations, but the legislation's intelligibility and efficacy are premised in a particular type of liberal individual. In the *Companions Animal Act 1998*, there are some provisions that function in this conventional sense of governing. These include compulsory registration, microchipping and the powers to regulate dangerous dogs. However, much of the Act requires self-governing — like walking a dog on a leash and disposing of faeces correctly, because enforceability and sanctioning are rarely possible.

Thus the degree to which our relations with pets are currently dictated by self-governance and the conventional sense of government, through legislation and regulations supervised by various state bodies, is *prima facie* difficult to disentangle at an empirical level. The *Companions Animal Act 1998* was drafted within an advanced liberal society (and concomitant mentalities of rule), and it logically instantiates a subject whose freedom to choose occurs through the subjection of the legislation. The crucial point is that the *Dog Act 1966* also presupposes a free individual who is necessarily required for liberal-based societies to function. But this individual has more freedom to choose, is less subjected by the Act and is much less 'responsibilised' by the Act. Self-governing is necessarily part of the intelligibility of both Acts. The self-governing of dog owners also occurs in relation to the attitudes and behaviours of non-owners; the extent and type of self-government occurring in relation to these attitudes and current norms would require a sociological investigation.

### *Mentalities of Rule*

The concept of governmentality outlined by Foucault,<sup>22</sup> and developed by many others,<sup>23</sup> provides a methodology to examine particular occurrences, taken-for-

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<sup>20</sup> Dean (1999), p 168.

<sup>21</sup> Dean (1999), p 165.

<sup>22</sup> Foucault (1991, 2000).

granted assumptions and implied political rationalities. Foucault's concept of governmentality is used to analyse contemporary practices, 'revealing the ways in which their modes of exercising power depend on specific ways of thinking (rationalities) and specific ways of acting (technologies)'.<sup>24</sup> This also relates to how citizens are subjectified — that is, made subject to rationalities in ways that constitute possibilities for subjectivity — and to how populations are governed. Using the concept of governmentality as an analytical device opens the possibility of making links between established and patterned ways of thinking or mentalities of rule. It also shows how mentalities of rule are, often implicitly, guiding the actions of policy-makers and how particular programs of regulation imagine their subjects and objects (in this case, pet owners, local councils and pets). Mentalities of rule are the 'broad discourses of rule'<sup>25</sup> within which governments form particular programs that address questions of how to govern a given problem or situation.

In this case, the problem of regulating pets and owners has arisen due to the historical changes in animal-human relations from the 1960s to the 1990s. These changes required a different way of conceptualising the problem to be governed. The mentalities of rule moved from one focused on a more collective response to animal-human relations to a more individualised one. What dogs and owners do is the issue in both pieces of legislation (the embodiment of a mentality of rule), but the problem of how to govern the relevant subjects has changed. Governmentality 'pinpoints a specific form of *representation*; government defines a discursive field in which exercising power is rationalized'.<sup>26</sup> The exercise of power is made rational through a certain conceptualisation of the 'new' problem. This new problem of controlling pet behaviour as an individualised problem forms part of a shift in the mentalities of rule towards responsibility as it is configured in neo-liberalism. Neo-liberalism 'tries to ground the imperatives of government upon the self-activating capacities of free human beings, citizens, subjects'.<sup>27</sup>

### *Technologies of Rule*

Each of the Acts under consideration is a technology of rule. As a legal instrument, they put laws and regulations into place that construct and seek to govern the social in prescribed ways.<sup>28</sup> The Acts are a response to a problematisation (discussed below) of the dog/companion animal situation. The neologism 'governmentality'

<sup>23</sup> For example, Rose (1999); Dean (1999); Hindess (1997).

<sup>24</sup> Barry et al (1996), p 5.

<sup>25</sup> O'Malley et al (1999), p 501.

<sup>26</sup> Lemke (2001), p 191.

<sup>27</sup> Rose (1999), p 64.

<sup>28</sup> The paper does not have the scope to consider the more sociological question of how non-dog-owning citizens have contributed to the regulatory relationship between dogs and their humans. To adequately address this issue would require qualitative research that asks non-owners about their attitudes towards dog owners and whether they take any action based on these attitudes. For a more complete study, owners would also need to be asked about their reactions or responses to non-owners. The paper is concentrating more on the social relations presented in the legislation and in the Bills, but makes some speculation on the mediated social relations around dog ownership.

captures the link between governing as an activity that requires specific techniques, instruments, technologies, procedures and ways of thinking (mentalities). Lemeke describes the technologies part of governmentality as follows: 'For a political rationality is not pure, neutral knowledge which simply "re-presents" the governing reality; instead, it itself constitutes the intellectual processing which political technologies can then tackle.'<sup>29</sup> In practice, governing occurs through an activity that is necessarily underpinned or framed within a mode of thought that, in turn, is a response to a problem of government. The legislation embodies the response to the problematisation of animal-human relations, and was constructed through and embodies the mentalities of rule used to address the problematisation.

### *Critique of Governmentality*

O'Malley<sup>30</sup> and O'Malley, Clifford and Shearing<sup>31</sup> critique the tendency of systemisation in governmentality-based projects. This occurs when a mentality of rule — usually neo-liberalism or advanced liberalism — is accorded a reality without reference to the nature of this reality.<sup>32</sup> There is often an acceptance of the 'content' of neo-liberalism without returning to the texts, like those of Hayek and Freidman, that elaborate what this form of liberalism is and how it works. Instead the 'contents' have become systematised into a mentality of rule that can be applied to each new instance of regulation. The methodology becomes one of looking at the instance of regulation and identifying what matches the rationality of neo-liberalism — and, in the process, omitting or glossing over other forms of rule.

### *Methodology*

As a partial counter to the issues outlined by O'Malley,<sup>33</sup> the analysis is being done based on the language of the Acts and of the parliamentary debate. Each piece of legislation was read closely to establish categories within which the relevant sections of each Act could be located. The categories are: public spaces and the seizure of dogs; dangerous and nuisance dogs; civil and criminal liability of dog owners; and registration of dogs. In doing this, the entire legislation was examined for the changes that had occurred. Similarly, the debates were read to draw out the main versions of the point under consideration. The analysis moved from the data so that all major aspects of the legislation and debates were included, then to interpreting the changes through the governmentality approach.

The parliamentary debates offer access to mentalities of rule that allow an analysis of 'thought made practical and technical'.<sup>34</sup> The central question is: How does each Act seek to govern? Each of the two Acts is analysed to answer the central question through comparing the two in terms of their formulation of the problem to be governed, their mentalities of rule, their means of objectification and

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<sup>29</sup> Lemeke (2001), p 1091.

<sup>30</sup> O'Malley (2001).

<sup>31</sup> O'Malley et al (1997)

<sup>32</sup> O'Malley (2001), p 18.

<sup>33</sup> O'Malley (2001).

<sup>34</sup> Dean (1999), p 18.

subjectification, and their associated technologies. As mentioned above, the analysis of *Hansard* partially addresses O'Malley's argument that an 'analytics of government' that focuses on politics as mentalities of rule cannot be privileged over genealogical factors that see politics as contested social relations.<sup>35</sup> The debates emphasise genealogy as critique and governing as having 'a conceptualisation of politics as relations of contest and struggle which are constitutive of government rather than simply a source of programmatic failure and (later) redesign'.<sup>36</sup> The limitation of the paper is a tendency to use the systematised categories of mentalities of rule which may obscure competing mentalities. However, one of the main purposes of the analysis is to examine the social relations imagined in the Acts (in the governmental reasons) and the political act is to challenge the adequacy of these imagined social relations and forms of subjectification.

### Governing Pets and Their Humans

A brief overview of the legislation under discussion shows that, as a minimum, the quantities of regulation have increased. In the *Dog and Goat Act 1898*, there is little mention of the regulation of goats. The Act is very short, with only 24 sections in three parts. Primarily it covers the procedures for registration and the penalties for failing to register. The *Dog Act 1966* replaces the *Dog and Goat Act 1898*. This Act is slightly larger, with 27 sections over six parts that cover the control, seizure and registration of dogs. The *Companions Animal Act 1998* has 99 sections, and is obviously much larger than the *Dog and Goat Act 1898* and *Dog Act 1966*; it covers dogs, cats and potentially other types of companion animals. The *Companions Animal Act 1998* consists of nine parts, which include the compulsory identification and registration of companion animals, the responsibilities of owners of dogs and cats, and provisions and procedures for dealing with seized animals. The legislation is discussed initially to provide the data from which to consider the mentalities of rule. First, the specific problematisation of the animal-human relations as something to be governed is considered.

#### *Problematisation: Stated Purpose of the Acts*

Adapting Rose's<sup>37</sup> discussion, the legislation is the start point for a genealogical analysis of the problematisation of animal-human relations. The legislation is part of a 'symptomatology' that can be used to diagnose the questions around how to govern pets and their humans: 'In reconstructing the problematisations which accord them intelligibility as answers, these grounds become visible, their limits and presuppositions are opened for interrogation in new ways.'<sup>38</sup> The human-animal problem is evident in the changes in terminology and in the stated purposes of the Acts. The terminology was not an issue in the *Dog and Goat Act 1898* and *Dog Act 1966*, as a dog was a dog and a goat a goat. In section 5 of the *Companions Animal Act 1998*, 'companion animal' is defined as meaning a dog, a cat or 'any other

<sup>35</sup> O'Malley (2001), pp 18–19; O'Malley et al (1997), pp 502, 504.

<sup>36</sup> O'Malley et al (1997), p 505.

<sup>37</sup> Rose (1999), pp 57–58.

<sup>38</sup> Rose (1999), p58.



animal that is prescribed by the regulations as a companion animal'. In the first reading of the *Companions Animal Act 1998*, the minister stated: 'The term "companion animal" was chosen to reflect the animal and community welfare focus of the new law. A companion animal is one kept for the welfare and benefit of both the animal and its owner.'<sup>39</sup> The shift from 'dog' to 'companion animal' occurred to encompass the regulation of more animals and because, as Franklin shows, emotional attachments have changed to allow humans to have a companion and not a pet. However, the legislation is forced to use 'owners' when describing the responsibilities of humans for their cats and dogs. The animal is still something to be owned that is also a companion.

The aims of the *Dog Act 1966* are described as follows: 'The principal objects of the Bill are to introduce an effective system of registration by municipal and shire councils; to provide better control of dogs; to empower councils to establish pounds for the reception of stray and unwanted dogs; and to repeal the existing *Dog and Goat Act*.'<sup>40</sup> There is also brief and infrequent mention of legislating to encourage the love and care of dogs. The *Companions Animal Act 1998* is overtly expressing a concern with animal welfare and management — not control, as in the *Dog Act 1966*: 'The object of the Bill is to provide for the effective and responsible care and management of companion animals ...'<sup>41</sup> In the *Companions Animal Act 1998*, the problem is configured as being one of responsible ownership of companion animals for the benefit of the animal (supposedly), of the owner, the community, the environment and wildlife (the problem of feral cats and dogs). In configuring animals in this way, the regulatory regime must be more encompassing than the *Dog Act 1966*, as there is more to protect.<sup>42</sup> The later Act overtly requires a different kind of self-regulation in comparison to the earlier Act, as the problem of government is different. The presuppositions that make these Acts intelligible responses to these problematisations are discussed in the following sections.

The impetus for the *Companions Animal Act 1998* was a changing pattern of pet ownership, 'partly as a result of different approaches to urban development and workforce participation',<sup>43</sup> and a change in community expectations about what is required of a responsible pet owner. In the 1960s, houses were further apart, with smaller houses on a block than now — that is, there was more yard and more distance between houses. During this period, dogs were allowed to wander the streets (part of the need for the *Companions Animal Act 1998*). Also, the participation of women in the workforce was much lower in the 1960s. In combination, these factors meant dog barking was potentially less annoying than now, as they had more yard in which to entertain themselves and freedom to roam, and there was a much greater chance that someone would be at home during the day. Urban consolidation<sup>44</sup> has required changes to the regulation of cats and dogs,

<sup>39</sup> Hansard, 6 May 1998, p 1.

<sup>40</sup> Hansard, 22 February 1966, p. 3420.

<sup>41</sup> Hansard, 6 May 1998.

<sup>42</sup> Section 4 of the *Companions Animal Act 1998* is new, and states that the protection of native birds and animals in a policy objective of the state.

<sup>43</sup> Hansard, 6 May 1998.

<sup>44</sup> Newby (1999), p 230.

with too little consideration by town planners of what dogs need. Dogs are now much more reliant on their humans for mental stimulus and exercise. When humans find the time for this, there is the difficulty of finding the correctly designated off-leash park. Newby<sup>45</sup> argues that the problems that can arise with dogs are often sheeted home to irresponsible owners by the local council; however, she argues, 'some of what we are dealing with is not a people or animal problem at all. It is structural.'

The *Companions Animal Act 1998* addresses the structural problem by requiring local councils to provide at least one off-leash area, which is clearly inadequate by any measure. The legislation does not state the size of the area, the location (how easy it is to get human and dog there) or whether it must be designated purely for dog use and not be shared by other users. Thankfully, most councils do provide more than one park. The parliamentary debate acknowledges the problems of urban consolidation for animals and owners, but falls woefully short of enacting laws to address them. Instead, the Regulations make councils (and owners) liable for a structural problem without specifying any criteria other than one off-leash area per council. The state government retains its law-making/maintaining capacity without being responsible for its implementation; this is left to councils, community groups (like Monica's Doggie Rescue and the St George Animal Shelter) and individuals. Garland<sup>46</sup> calls this devolution of state powers into smaller units of organisations, community groups and individuals 'the responsibilising strategy'.<sup>47</sup>

### *Legislation: Technologies of Rule*

The Acts themselves are technologies of rule: 'If political rationalities render reality into the domain of thought, these "*technologies of government*" seek to translate thought into the domain of reality, and to establish "in the world of persons and things" spaces and devices for acting upon those entities of which they dream and

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<sup>45</sup> Newby (1999), p 230.

<sup>46</sup> Garland (1996), pp 452–55.

<sup>47</sup> Garland's concept of 'responsibilisation' is more applicable to the functioning of the Acts than the concept in the governmentality literature of 'governing at a distance'. Rose (1999), pp 49–50 comments that: 'Political forces instrumentalize forms of authority other than those of the "state" in order to "govern at a distance" in both the constitutional and spatial senses-distanced constitutionally, in that they operate through the decisions and endeavours of non-political modes of authority; distanced spatially, in that these technologies of government link a multitude of experts in distant sites to the calculations of those at the centre.' Different political forces contributed to the creation of the *Companions Animal Act 1998*, as can be seen in the *Hansard* discussion. However, the Act is formally implemented through local councils and is therefore part of the state. In regulating dog-human relations, there is no non-state centre, nor forms of 'non-political modes of authority'. Instead, to the extent that they can, councils (mostly in cases of dangerous/nuisance animals and less so in ensuring dogs are leashed and owners dispose of faeces correctly) are responsible for implementing the legislation. So the *Companions Animal Act 1998* does not govern at a distance. It governs through a devolution of authority to councils, animal shelters and individual dog owners.

scheme.<sup>48</sup> Some of the provisions are technologies in themselves because they establish forms of acceptable behaviour and ban animals from certain places; others legislate for the use of technologies like microchipping the animals or compulsory registration. As Miller and Rose argue, these technologies are developed by policy-makers to 'shape, normalize and instrumentalise the conduct, thought, decisions and aspirations of others in order to achieve the objectives they consider desirable'.<sup>49</sup> The desired objective of the *Dog Act 1966* is the control of dogs, and in the *Companions Animal Act 1998* the objective is to make pet owners responsible. The main provisions that are in themselves technologies are those around the seizure and destruction of animals, including how this is dependent on the construction of public and private space, the classification of dangerous and nuisance animals and legal liability provisions, and the category of provisions that establish technologies centred around registration and monitoring procedures.

### *Public Places and the Seizure of Dogs*

The procedure for seizure and destruction of dogs is similar for both the *Dog Act 1966* and the *Companions Animal Act 1998*. However, there are differences between the Acts as to what triggers the seizure of a dog. In the original *Dog Act 1966*, there was no requirement that a dog should be contained on private property and there was no provision to require the constraint of a dog in public. A dog could be seized (s 10) if it was in a public place and not under effective control, or on land not belonging to its owner and without the land owner's permission. The policy-makers wanted to remove stray or lost dogs from the streets without limiting the options for responsible owners. These provisions were technologies that sought to achieve this by allowing dogs into public places provided they were under effective control — which does not necessarily require leashing.

In 1981, the *Dog Act 1966* was amended and: 'For the first time in the history of the legislation in New South Wales an attempt was made to control the access of dogs to public places.'<sup>50</sup> This was done via section 8(1), making a person guilty of an offence if their dog was in a public place and not under effective control via a leash or equivalent. This means that, currently, dogs cannot legally be walked off the leash anywhere in public except in designated off-leash areas (*Companions Animal Act 1998*, s 13). The *Companions Animal Act 1998* goes further than this by listing a number of areas in which dogs (and cats) are expressly forbidden (ss 14, 30) — including, for example, food preparation areas, children's play areas, school grounds, childcare centres and wildlife areas. Once an owner has been warned, a dog can be seized if it is unleashed outside of a designated off-leash area or is in the prohibited areas. Specifying these areas is new. The stated purpose of the *Companions Animal Act 1998* is the effective care and management of companion animals. In limiting animals' access to certain places and requiring effective control via a leash, the management of the animal is achieved. Leashing the animal could be seen as caring for it, for example, by preventing it being hit by a car. However, the restriction of available public space is much more about management (or really

<sup>48</sup> Miller and Rose (1990), p 8.

<sup>49</sup> Miller and Rose (1990), p 8.

<sup>50</sup> Law Reform Commission (1988), p 10.

control) than it is about the welfare and care of the animal. Owners are being governed through these provisions and their normalising capacity, in a way that diminishes their freedom to choose how to control their dog and where they can both go.

### *Dangerous and Nuisance Dogs*

The *Dog and Goat Act 1898* and the *Dog Act 1966* do not explicitly classify animals as dangerous or nuisance. The *Dog and Goat Act 1898* (s 12) allows for bulldogs and mastiffs or mongrels from these breeds to be destroyed if in public without a muzzle. The *Dog Act 1966* (has special provisions for Greyhounds and Alsatians. However, the *Companions Animal Act 1998* has categories of nuisance dogs (s 21) and cats (s 31), dangerous dogs (Part Five) and restricted breeds of dogs (ss 55–58). The nuisance cat and dog, and the restricted dog provisions, are new, and the dangerous dog provisions build on to those in the amended *Dog Act 1966*. Along with the classification, the *Companions Animal Act 1998* also has detailed procedures for owners of these dogs and cats, including the power to declare a dog to be dangerous. These provisions are a response to the perception of risk by adding to the legislated responsibilities of owners and by removing their discretion and freedom of choice regarding where their dogs can go.

### *Civil and Criminal Liability of Dog Owners*

Each Act establishes criteria for the civil and criminal legal liability of owners when their pet destroys property or injures a person or animal. Civil liability is similar in both Acts.<sup>51</sup> Section 13 of the *Dog and Goat Act 1898* makes it a criminal offence for a dog to rush at or attack any person, horse or bullock ‘whereby the life or limbs of any person are endangered or property injured’. Section 6 of the *Dog Act 1966* makes the owner of a dog criminally liable, or guilty of an offence, if the dog attacks or causes injury to a person or animal in a public place, or attacks or causes injury to a person ‘in or on any other place, who is lawfully in or on that place’. This extended the previous law by adding offences on private property. But the *Dog Act 1966* also reduced the scope of an owner’s liability through not re-enacting threatening behaviour. This means that injury must be the direct result of the attack and not a result of being rushed at or threatened. The *Companions Animal Act 1998* (s 16(1)) extends the original *Dog Act 1966* back towards the *Dog and Goat Act 1898* by making it an offence ‘if a dog rushes at, attacks, bites, harasses or chases any person or animal ... whether or not any injury is caused to the person or

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<sup>51</sup> In the *Dog Act 1966* (s 20), the dog’s owner is liable in damages for injury to any person, property or animal caused by the dog. As written, this does not distinguish between private and public property. However, because of this generality, it may have been given a more restrictive application by the courts (Law Reform Commission Report, 1988, n 35). Civil liability in the *Companions Animal Act 1998* is covered in sections 25–28. The *Companions Animal Act 1998* gives more details on civil liability; the basic intent is the same as sections 19–20, but exceptions are given and there is clarification that civil liability arises even when the dog causes injury, death or damage on its owner’s property.

animal'.<sup>52</sup> So, in effect, an owner can be held criminally liable when no injury occurs. This seems like an attempt to try and regulate dogs' animality, and the apparent irresponsibility of the owner. Dogs do rush at and chase each other as part of their normal interactions, and rarely is any harm caused. It also seems unclear as to how these terms would be defined by a court where no injury has occurred. This shift constructs dog behaviours as more threatening than the *Dog Act 1966*, and potentially criminally punishes anyone who does not prevent this kind of behaviour — that is, an irresponsible owner.

### *Compulsory Registration of Dogs*

In general, the Acts outline the obligations of the agents of government in establishing, maintaining and enforcing registration systems, and the obligations of owners to register their pet and to make sure the animal has the visible signs of registration. The legislative establishment of an advisory board in the *Companions Animal Act 1998* shows an elevation in the status of pets into something that needs to be more carefully understood, cared for and managed through advice from a range of professionals and community representatives.

The administrative procedures have become more detailed and sophisticated in line with new information technologies and public/government expectations. The *Companions Animal Act 1998* requires compulsory microchipping; there is a statewide register of dogs, no longer confined to local council areas; and registration is for the life of the dog. Microchipping is a new piece of technology that was unavailable in 1966. It gives a much greater degree of surveillance than just registration, and is aimed at returning lost dogs to their grateful owners and to dealing with irresponsible owners. *Hansard* argues that this is good for the welfare of the dog. In cases where the dog is loved, being returned to its owners is very positive. But there is no compulsion in the Act to take the dog back. This technology of rule does not necessarily help unwanted dogs.

### *Mentalities of Rule: Risk, Responsibility, Freedom and Choice*

According to Miller and Rose, from around 1900 until the 1950s, the citizen was regarded as a social being whose powers and obligations were articulated in the language of social solidarity and social responsibility.<sup>53</sup> From the 1960s, citizenship was manifested through free choice, personal freedom and self-fulfilment.<sup>54</sup> The *Dog Act 1966* gave individuals freedom to choose how to regulate their dog's behaviour in accordance with the new laws. The *Companions Animal Act 1998* constructed the problem as being based in the need for better individual responsibility. This meant individuals lost the freedom of choice to the imperative to remove or diminish the new perceptions of risk. Rose<sup>55</sup> argues that, in 'advanced liberalism', 'the problem of freedom now comes to be understood in terms of the

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<sup>52</sup> There are some exceptions to this (s 16(2)), including if the dog was being mistreated, if the animal or person was trespassing or if the dog was acting in reasonable defence of a person or property.

<sup>53</sup> Miller and Rose (1990), p 23.

<sup>54</sup> Miller and Rose (1990), p 24.

<sup>55</sup> Rose (1999), p 84.

capacity of an autonomous individual to establish an identity through shaping a meaningful everyday life'. For the subject in the *Companions Animal Act 1998*, a meaningful life is to be shaped around responsible pet ownership. The ideational premises behind and within the legislation are mentalities of rule and modes of subjectification.

As already argued, the main issue for both Acts is the control and management of dogs/companion animals. The main differences in *Hansard*, and in the Acts, can be analysed through considering how risk is constructed and how responsibility and (implicitly) freedom is constructed. Both Acts have explicit or implicit responsibilities of owners and government agencies and agents (councils or police). The major difference is that the *Companions Animal Act 1998* has codified and named responsibilities. The differing forms of responsibility also bring different forms of subjectification and objectification. The debates provide an insight into the reasoning behind the legislation.

Apart from the overall aim of the Dog Bill — that is, to remove packs of dogs from the streets — there is little implicitly or explicitly about danger and risk in the debate. This is typical of the arguments for the need to control dogs; the Bill 'will empower shire and municipal councils to abate nuisances caused by stray dogs and to remove the menace of dog packs in outlying areas'.<sup>56</sup> The main point of consensus is that there is a general nuisance or menace posed by stray dogs, and establishing a council-based procedure is the best way to deal with the problem.

In the Dog Bill debate, the word 'responsible' appears occasionally in the record. The new responsibilities of councils are raised, especially those of running pounds and of registration procedures. Given that each local council area has unique conditions, 'the final responsibility for reasonable yet effective discharge of its duties in the public interest must rest in each case with the local council ... Dog owners also should realise that they have a responsibility to their fellow citizens in this matter'.<sup>57</sup> The responsibility of the council is to gather up stray dogs and the owner's responsibility is to make sure their dog does not become a stray. There is greater freedom of choice for individuals in this Act than in the *Companions Animal Act 1998*.

The scope of responsible pet ownership is much wider in the Companion Animal Bill debate; no longer limited to effective dog control, responsibility extends to how having a pet affects neighbours, everyone else (the community), wildlife (*Companions Animal Act 1998*, s 4) and the environment. 'It is the small number of irresponsible pet owners who cause most problems for the community. Their animals are the ones that roam the streets, pollute public areas, cause property damage, or attack people and other animals'.<sup>58</sup> Reference is occasionally made to control, but it never forms a main theme in the discussion or a stated central purpose. For example: 'There is certainly a need to constructively and sensibly control the behaviour of unwanted cats and dogs in the community. In many cases the biggest problem is trying to control the owners of the animals rather than the

<sup>56</sup> *Hansard* (1966), p 3420.

<sup>57</sup> *Hansard* (1966), p 1174.

<sup>58</sup> *Hansard*, 6 May 1998.

animals themselves.’<sup>59</sup> In both these debates, humans are clearly seen as the main problem to be addressed. However, the issue of human irresponsibility and animal ‘innocence’ is much stronger in 1998 than in 1965–66.<sup>60</sup> In 1965–66, the broader problem is packs of dogs, perhaps once caused by irresponsible owners but nevertheless a problem in itself. In 1998, the problem is unacceptable pet behaviours; however, the source is irresponsible owners. To this end, the Act defines the responsibilities of owners into legislation. This debate signals that the freedom to choose to have a pet comes with clearly defined responsibilities; whether these responsibilities are enforceable and/or are followed is a different issue.

In ‘The Subject and Power’, Foucault uses the term ‘government’ to refer to forms of conduct that require human beings to do things and that involve the government of one’s self: ‘To govern, in this sense, is to structure the possible field of actions of others.’<sup>61</sup> A necessary condition for power to function is freedom: ‘By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realised.’<sup>62</sup> The *Companions Animal Act 1998* clearly requires human beings to do things such as register and leash their dog, or potentially face a large fine. Given the difficulties of enforcing much of the legislation, there is a reliance on the pet owner to govern him or herself. As part of the liberal mentality of rule, freedom is one of the ways in which the individual comes to govern the self. Yet the freedom of pet owners has diminished. Pet owners have been ‘responsibilised’ in ways that make their choice an individual responsibility. However, within this narrowing of freedom, the responsible individual can still make choices.

To digress to a personal example, why do I now pick up the dog’s poo in my trusty ever-present plastic bag? Not because I knew about the ‘poo amendment’ (a 1981 amendment to the *Dog Act 1966*); I was picking up before the *Companions Animal Act 1998* was being publicly discussed. In part, it has to do with probably unknowingly falling into the process of self-governing as a response to changes in attitudes towards dog ownership — that is, the imperative to be responsible not so much towards the dog but towards those who do not necessarily like dogs. I also began doing it because I saw other people do it, which had a normative function. Foucault<sup>63</sup> argues that: ‘There are two meanings of the word *subject*: subject to someone else by control and dependence, and tied to his own identity by conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to.’ The normative function works with the liberal mentality of rule that ties my subjectivity to an identity composed of the responsibilised individual. Certainly, I still have the freedom to choose to scoop or not, as there is often no other person to tell me and there is never a council ranger to fine or threaten me;

<sup>59</sup> *Hansard*, 21 May 1998.

<sup>60</sup> Cf Franklin’s (1999), pp 54–55 discussion of misanthropy.

<sup>61</sup> Foucault (1982), p 221.

<sup>62</sup> Foucault (1982), p 221.

<sup>63</sup> (1982), p 212.



mostly, though, I do the right thing. However, scooping is not without ambivalence. Is it better for the environment to put poo into a plastic bag and then into landfill, or to leave it to breakdown into the soil, or to introduce dung beetles in areas used frequently by dogs? Bagging is clearly not the ideal solution, but it is a solution that fits into the embodiment of the responsible individual being responsible for an individualised problem. The construction of the problem is that, as an individual, I chose to bring a dog into my suburb and the identity that goes with this choice — at least in my neighbourhood — is to be responsible for the dog's behaviour.

The care, welfare and management of pets constitute a common theme in the Companion Animal Bill debate. The *Companions Animal Act 1998* introduces microchipping, which can be beneficial to a lost and wanted dog. However, there is little in the Act that is a clear and unambiguous benefit to the animal. Leashing in a public place can be beneficial, but it also curtails the dog's freedom of movement. The specification of one off-leash area per council is ridiculous, and the listing of prohibited places also reduces the space available for dogs to exercise and interact. The criminal liability provisions are aimed at protecting people, property and animals, but define liable behaviour very widely in a way that can still catch responsible owners. The dogs — or, more accurately, the owners — are being managed, but the level of care given to dogs is limited. The concerns of the community are covered by nuisance and dangerous dog classifications, as well as by the control of public spaces and the criminal liability provisions. An attempt to protect wildlife is covered in the provisions covering the seizure and destruction of dogs. The environment is protected by limiting access to public places and through the 'poo provision'. The *Companions Animal Act 1998* is much more concerned with responsabilising owners in ways that ensure the welfare of the community, wildlife and the environment.

## Conclusion

The *Dog Act 1966* sought to govern dogs and humans through establishing a registration and impounding procedure. The *Companions Animal Act 1998* sought to govern through legislating the responsibilities of pet owners and through banning pets from certain places. Using the governmentality approach, the Acts are seen as technologies of rule that are supported by certain mentalities of rule. Within this analysis, the social relations between dogs and humans in the *Dog Act 1966* seems to be less problematic than those in the *Companions Animal Act 1998*. In the *Dog Act 1966*, dogs are a problem as strays and if a dog attacks others, but are otherwise generally just dogs in relation to their owners and others who may come in contact with them. In the *Companions Animal Act 1998*, and the debate, companion animals and their owners are given a much clearer social and legal connection through the 'responsibilisation' of owners — responsibilities that extend to wildlife, the community and the environment. Does this configuration benefit the animals or humans, or both? The debate emphasises the animal's welfare by, for example, microchipping facilitating the return of lost pets. In practice the legislation is primarily focused on the regulation of humans for the benefit of humans, and secondarily for the benefit of animals.



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